

## **Material Changes to the Nutrient Management Rules**

---

### **TITLE 19 (RULES GOVERNING THE ARKANSAS POULTRY FEEDING OPERATIONS REGISTRATION PROGRAM)**

Section 1902.6.C. was deleted. Because operators participating in the Concentrated Animal Feeding Operations (CAFO) program will submit information to ADEQ, the agency administering the CAFO program, there is no longer reason for ASWCC to provide that same information to ADEQ.

Section 1902.7.B. was deleted. It provided for the collection of copying and other administrative fees.

Section 1903.2.A.1. Complainants are required to submit written complaints, give contact information, and sign the complaint in the presence of a notary public. The Complaints will be available through the Freedom of Information Act.

Section 1903.3.A. A graduated penalty scale was created. A warning letter will be issued on the first offense. Upon second and third offenses, the violator will have the option to sign an Administrative Consent Order that will include a maximum \$50 penalty for the second offense and the ability to impose up to the statutory maximum for the third offense. To move up the scale, a person would have to be found in violation the second or third time within one year of receiving a warning letter.

Section 1903.3.C and D. Operators have 30 days rather than 10 days to respond to an Administrative Consent Order. Restated Ark. Code Ann. § 15-22-208 language stating that the Commission and the Director may issue subpoenas to any witness requiring attendance and testimony before the Commission.

Section 1904.1 Added more explanatory language to Judicial Review section.

### **TITLE 20 (RULES GOVERNING THE ARKANSAS NUTRIENT MANAGEMENT PLANNER CERTIFICATION PROGRAM)**

Section 2001.1. Added language stating that training provided by the Commission will meet United States Department of Agriculture Natural Resources Conservation Service standards.

Section 2001.3. Tied Commission definition of Nutrient Management Plan to Natural Resources Conservation Service standards.

Section 2003.1 Certification will be for 5 years rather than 3. All other sections where the term is listed were changed.

Part of Section 2005.1.A. was deleted. It provided for the collection of copying and other administrative fees.

Section 2006.1. Deleted provision that made offering or preparing a Nutrient management plan as a Nutrient Planner certified under Title 20 a violation since Title 20 only regulates persons certified by the Commission. Persons who hold themselves out as Commission-certified planners without certification and prepare plans would be in violation of Title 22 and subject to Title 22's stiffer penalties.

Section 2006.2.A. Complainants are required to submit written complaints, give contact information, and sign the complaint in the presence of a notary public. The Complaints will be available through the Freedom of Information Act.

Section 2006.3.A. A graduated penalty scale was created. A warning letter will be issued on the first offense. Upon second and third offenses, the violator will have the option to sign an Administrative Consent Order that will include a maximum \$50 penalty for the second offense and the ability to impose up to the statutory maximum for the third offense. To move up the scale, a person would have to be found in violation the second or third time within one year of receiving a warning letter.

Section 2006.3.D. Operators have 30 days rather than 10 days to respond to an Administrative Consent Order. Restated Ark. Code Ann. § 15-22-208 language stating that the Commission and the Director may issue subpoenas to any witness requiring attendance and testimony before the Commission.

Section 2007.1 Added more explanatory language to Judicial Review section.

**TITLE 21 (RULES GOVERNING THE ARKANSAS NUTRIENT MANAGEMENT  
APPLICATOR CERTIFICATION PROGRAM)**

Section 2101.1.B Added language stating that training provided by the Commission will meet United States Department of Agriculture Natural Resources Conservation Service standards.

Section 2101.3. Tied Commission definition of Nutrient Management Plan to Natural Resources Conservation Service standards.

Section 2101.5. We redrafted this section to better address the distinctions between certified commercial applicators and certified private applicators.

Section 2101.6. This new section states that persons under the supervision and control of a Certified Applicator may apply nutrients without obtaining applicator certification.

Section 2104.1. Certification will be for 5 years rather than 3. All other sections where the term is listed were changed.

Section 2106.1.A. was deleted. It provided for the collection of copying and other administrative fees.

Section 2107.1. Deleted provision that made offering or performing Nutrient application as a Nutrient Applicator certified under Title 21 a violation since Title 21 only regulates persons certified by the Commission. Persons who hold themselves out as Commission-certified applicators without certification and apply nutrients would be in violation of Title 22 and subject to Title 22's stiffer penalties.

Section 2107.2.A. Complainants are required to submit written complaints, give contact information, and sign the complaint in the presence of a notary public. The Complaints will be available through the Freedom of Information Act.

Section 2107.3.A. A graduated penalty scale was created. A warning letter will be issued on the first offense. Upon second and third offenses, the violator will have the option to sign an Administrative Consent Order that will include a maximum \$50 penalty for the second offense and the ability to impose up to the statutory maximum for the third offense. To move up the scale, a person would have to be found in violation the second or third time within one year of receiving a warning letter.

Section 2107.3.D. Restated Ark. Code Ann. § 15-22-208 language stating that the Commission and the Director may issue subpoenas to any witness requiring attendance and testimony before the Commission.

Section 2108.1 Added more explanatory language to Judicial Review section.

**TITLE 22 (RULES GOVERNING THE ARKANSAS SOIL NUTRIENT AND POULTRY  
LITTER APPLICATION AND MANAGEMENT PROGRAM)**

Section 2201.3.B, which states that the Commission may consider the tradition of people affected by this Title when developing regulation, was added upon request of poultry growers who reviewed these rules.

Section 2201.3.D. was deleted. It provided for the collection of copying and other administrative fees.

Section 2201.4. Tied Commission definition of Nutrient Management Plan to Natural Resources Conservation Service standards.

Section 2202.3.E. Allows someone under the direction or control of a certified applicator to apply nutrients.

Section 2202.3.F. Persons who buy from commercial fertilizer distributors or applicators may rely upon those persons to maintain records of nutrient application.

Section 2202.3.H. Allows the Executive Director to waive any provision of Title 22 consistent with nutrient management and could include waivers for a University studying the benefits of a particular conservation measure for resolving nutrient management issues.

Section 2202.4.B. If an owner has obtained a nutrient management plan, he must follow that plan rather than use the Protective Rate.

Section 2202.4.C-E. It is anticipated that most people will obtain a nutrient management plan since persons who obtain plans will likely be able to apply more nutrients. The Nutrient Management Plan will contain provisions which will be binding upon the owner of the plan and will be designed to account for features unique to that particular owner's situation. Because it is anticipated that most people will be bound by their plans, we have removed references to the more generic restrictions listed in 2202.4 C-E.

1. Deleted provision that prevented application of nutrients when rain is forecast.
2. Deleted provision that prevented application of nutrients to surfaces that slope 15% or more.
3. Deleted provision that prevented nutrient application within certain distance of water bodies.

Section 2202.4.E. Added new section preventing nutrient application directly to water to increase fish production without the Executive Director's determination that such application would not adversely affect water quality.

Section 2202.5.B. We clarified when a protective rate may be used without a soil test.

Section 2202.5.C. When a landowner cannot obtain a soil test, he may apply nutrients according to the written recommendation of a district conservationist, Commercial Applicator, Certified Nutrient Planners, or an American Society of Agronomy Certified Crop Advisor until January 1, 2009.

Section 2203.1 and Section 2204.1. We added a process for approving nutrient management plans and poultry litter management plans as well as a process for appealing denial of a plan or plan provision.

Sections 2203.3.B.5.a and 2204.2.B.6.a. Soil tests now required only every 5 years to match period for updating plans.

Sections 2203.3.B.5.b and 2204.2.B.6.b. Altered annual litter testing requirement. (Training of certified planners will specify how litter should be tested.)

Section 2203.6. and Section 2204.4. We added a provision allowing persons to rely on nutrient application records maintained by commercial fertilizer distributors and applicators.

Section 2204.5. Because Commission Certified Nutrient Planners will not be trained to write Comprehensive Nutrient Management Plans, we deleted most language referring to those plans. We did add language explaining that an Owner who has a CNMP will not be required to have a nutrient management plan or to apply at the protective rate.

Section 2205.2. Litter from a Nutrient Surplus Area used outside of a nutrient surplus area must be used in a manner approved by the Commission and persons receiving such litter must keep transfer records.

Subtitle VI. Language from the statute repeating the Litter Utilization Committee language was struck.

Section 2206.2.A. Complainants are required to submit written complaints, give contact information, and sign the complaint in the presence of a notary public. The Complaints will be available through the Freedom of Information Act.

Section 2206.3.A. A graduated penalty scale was created. A warning letter will be issued on the first offense. Upon second and third offenses, the violator will have the option to sign an Administrative Consent Order that will include a maximum \$50 penalty for the second offense and the ability to impose up to the statutory maximum for the third offense. To move up the scale, a person would have to be found in violation the second or third time within one year of receiving a warning letter.

Section 2206.3.D. Restated Ark. Code Ann. § 15-22-208 language stating that the Commission and the Director may issue subpoenas to any witness requiring attendance and testimony before the Commission.

Section 22206.4 Added more explanatory language to Judicial Review section.

Subtitle VIII was deleted. This section re-stated language from the statute clarifying that there is no conflict between the law and laws that are administered by the Arkansas Department of Environmental Quality.

Appendix B. We added more protective rate tables to cover nutrient management for all crops grown within the Nutrient Surplus Area.

**PROPOSED EFFECTIVE DATES OF TITLES**

TITLES 19, 20, and 21: December 18, 2004

TITLES 22: January 1, 2006

Persons may voluntarily obtain certification once the planner and applicator programs under Titles 20 and 21 become available. Title 22, which requires persons making nutrient application in nutrient surplus areas to be certified as an applicator and to apply according to a nutrient management plan or at the protective rate, will not become effective until January 1, 2006. Delaying the effective date of Title 22 allows the development of nutrient management plans and the certification of more persons before the date by which certification and application by nutrient management plan or protective rate will be required.